

MONTANA CHEMICAL DEPENDENCY CENTER POLICY AND PROCEDURE MANUAL

Policy Subject: Disciplinary Action & Discharge	
Policy Number: PRP 23	Standards/Statutes: ARM 37.27.120.121 MOM 3-0130
Effective Date: 01/01/02	Page 1 of 7

PURPOSE: To describe and define the process of employee disciplinary action and discharge.

POLICY: This facility incorporates the guidelines established by the Department of Public Health & Human Services and the Montana Operations Manual for employee disciplinary action and discharge.

PROCEDURE: Definitions

- I. Just cause
- II. Reasonable, job related grounds for taking disciplinary action based on failure to satisfactorily do job duties or disruption of agency operations.

III. It includes, but is not limited to:

- A. an actual violation of an established agency standard, legitimate order, policy or labor agreement
- B. failure to meet applicable professional standards
- C. a series of lesser violations if the employee would reasonably be expected to have
- D. knowledge of the action or omission .

IV. Due Process

- A. Is required in all disciplinary actions.
- B. Ensures that an accused employee is provided access to appropriate procedures in protection

of employee's rights and includes that an employee is:

C. informed of the allegations and the action being contemplated or taken and the reason for it afforded an opportunity to respond to and question the allegations or action and to defend or explain the questioned behavior or actions accusers during an arbitration proceeding or during the third step hearing under the non-union grievance procedure provided the right to representation by counsel, union representative or other representative of choice.

V. Progressive Discipline

A. The process of balancing the discipline to the nature of the offense.

B. A process of applying disciplinary actions which may progress from less serious actions to more serious actions based upon the initial severity, the repeated nature, or on a pattern of misconduct or poor performance.

C. More serious action is contingent upon the circumstances of the problem and is at the discretion of the employer.

VI. Informal Discipline

A. Discipline that has not been written or documented for insertion in the employee's personnel file.

B. It includes a supervisor's effort to change inappropriate employee behavior through:

C. corrective counseling; and/or verbal warning.

D. Although not formal, supervisors should record the date, time and nature of the employee contact in their supervisor's notes for future reference.

VII. Formal Discipline

A. Disciplinary action that results in a prepared document that is inserted in the employee's personnel file.

B. A supervisors effort to change an employees behavior through:

C. written warning or corrective action

D. punitive discipline such as suspension without pay or disciplinary demotion termination.

E. The specific appropriate and defensible action depends upon the nature and severity of the performance deficiency or behavior.

VIII. Documentation

A. The record of authoritative supporting information or materials that is used to authenticate

and/or substantiate a charge or charges against an employee.

B. Provides proof, evidence or the basis of the disciplinary action.

C. All discipline must be documented.

IX. Union Employee

A. An employee who is represented by a recognized union that has a valid contract with the employer.

B. Union contracts may give broader rights to covered employees; union staff is advised to be aware of the content of their individual union contracts.

C. Some contracts contain provisions allowing an employee to grieve any dispute, which is defined within the context of the contract, and are advanced under the provision of the collective bargaining agreement.

X. Non-Union Employee

A. Non-union employees are those that are not represented by a bargaining unit.

B. Non-union employees are entitled to the protections established in law and policy.

C. Non-union employees may only grieve formal disciplinary actions.

XI. Neutral Investigator

A. A person who is not a direct line authority over the accused employee.

B. May be used to interview witnesses, assess facts and assemble an objective report for review by the employee and management before a decision is rendered on appropriate disciplinary action to be taken.

XII. Constructive Discharge

A. The voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person finds so intolerable that voluntary termination is the only reasonable alternative.

B. It does not mean voluntary termination because of the employer's refusal to promote the employee or improve wages, responsibilities or other terms and conditions of employment.

XIII. Wrongful Discharge

- A. A discharge may be wrongful if:
 - 1. it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;
 - 2. the discharge was not for good cause and the employee successfully completed the probationary period;
 - 3. the employer violated the express provisions of its own written policy.

XIV. Grievance Procedure

- A. A process that allows an employee to argue the merits of disciplinary action.
- B. Union employees have access to grievance procedures as defined in individual collective bargaining agreements.
- C. Non-union employees may grieve certain disciplinary actions as described in MOM policy 3-0125 and must follow the step-by-step procedure contained therein.
- D. Available Disciplinary Actions

XV. Corrective Counseling

- A. A private meeting between the employee and the supervisor to discuss behavior or work performance problems.
- B. Any discussion about insufficient performance or behavior where the employee is told which corrections is necessary.
- C. Documentation of this action should be included in the supervisor's notes.
- D. The goal of this informal discipline is to clarify the supervisor's expectations and to correct the employee's behavior.

XVI. Verbal Warning

- A. A stronger level of informal discipline but is subject to the same procedures described in corrective counseling.
- B. Is used when corrective counseling fails to produce-needed improvement or the infraction warrants starting progressive discipline at a more serious level.
- C. The warning should be documented in the supervisor's notes, but is not placed in the employee's personnel file.
- D. It essentially orders an employee to change their behavior and warns of consequences if there is not compliance.

XVII. Written Warning

- A. A formal disciplinary procedure that is documented in the employees personnel file.
- B. A written letter advising an employee of the nature of the infraction, the previous informal discipline, if any, and the means necessary for correcting behavior.
- C. Employees represented by a bargaining unit may request union representation at this meeting and it should be granted.
- D. At a minimum, a written warning should contain:
 - E. notice of discipline: a statement of disciplinary action including duration, dates, etc.;
 - F. notice of law, policy, and performance deficiency or contract clause violated;
 - G. detail of the infraction, i.e. when, what, why, how, time, date, place, person, etc.;
 - H. if the discipline is progressive, a statement describing the previous attempts to remedy the behavior;
 - I. a statement giving complete and precise instructions about how to remedy the problem and perform at an acceptable level;
 - J. a warning of future disciplinary action that may occur if the problem is not corrected;
 - K. a notice of the employees right to respond and grieve the written notice;
 - L. a notice that the written warning will be placed in the employees personnel file;
 - M. a postscript statement which provides for the employee's signature, date and verification that the employee has received and had an opportunity to discuss the written warning.

XVIII. Corrective Action Plan

- A. It explains what the performance deficiencies are, what needs to happen to correct these, what training will be provided and what the time line is for completion.
- B. It is used when multiple performance issues exist and the supervisor wishes to develop a more comprehensive action plan.
- C. It generally has periodic written updates regarding the employees progress, or lack of, and any necessary additions or deletions.
- D. At a minimum, corrective action plans should include:
 - E. a general description of the performance problems;
 - F. a detailed description of what actions have been taken to resolve the performance issues, which may include: reference to past discipline; performance appraisals; training or other options taken to correct behavior;
 - G. statements about each performance objective giving complete and precise instructions about how to remedy the problems and perform at an acceptable level, what training will be provided to improve performance and how performance will be measured;
 - H. a time frame for reviewing compliance with the plan and for providing written updates to the plan;

- I. a warning of future disciplinary action that may occur if the corrective action plan is not followed;
- J. a notice of the employee's right to respond and grieve the corrective action plan;
- K. a notice that the corrective action plan will be placed in the employee's personnel file;
- L. a postscript statement, which provides for the employee's signature, date and verification that the employee has received and had the opportunity to discuss the corrective action plan.

XIX. Suspension Without Pay

- A. A level of punitive discipline that is used when previous efforts to remedy the performance or conduct has failed or the behavior is sufficiently serious to warrant this level of action.
- B. Notification to the employee of this action will be in writing and include a listing of the allegations, a time line for response and a description of what type of disciplinary action is possible.
- C. An employee should be given an opportunity to respond to the charges before disciplinary action is taken.
- D. When the employee's behavior is so severe and unquestioned the opportunity to respond may not be offered.
- E. When the facts surrounding the behavior or issues are unclear, the Administrator may assign an investigator to investigate the situation utilizing the investigative process.
- F. If the results of the investigation are neutral and the employees response to the situation still warrant suspension without pay, the employee will be notified in writing of this action.
- G. The letter of written notification will contain all the items noted in the description of a written warning (Section II, paragraph C, item 4 of this policy) and detail the length of the suspension without pay.
- H. Suspension without pay should not exceed three (3) working days unless:
 - 1. an investigation is occurring, or;
 - 2. severity of the infraction merits a longer term
 - 3. Suspension without pay for exempt employees under the Fair Labor Standards Act (FLSA) may be for no less than five (5) working days.

XX. Involuntary Termination

- A. Termination for cause is the ultimate form of discipline.
- B. At this level of discipline, an employee must be given the opportunity to respond to the charge(s) before termination

C. Notification will be in writing and include a listing of the allegations, a time line for response and notification that termination is possible.

D. If the infraction is severely egregious and unquestioned, this may be the immediate or first disciplinary action taken and the opportunity for the employee to respond may not be offered.

E. If the facts surrounding the behavior or issues are unclear, the Administrator may appoint a neutral investigator to investigate the situation following the investigative process.

F. If, after the employee's response to the charges and a neutral investigation, the behavior or situation warrants termination, the employee will be notified in writing and in person, if possible.

1. The written notification letter will contain:
2. a description of the unacceptable behavior;
3. a description of the neutral investigation and response;
4. documentation of any previous related discipline or incident;
5. a notice that the employee may grieve the termination.

XXI. General Guidelines

XXII. Employee Assistance Program

A. The supervisor may advise the employee of the availability of the Employee Assistance Program

B. This recommendation may be appropriate at all levels of the disciplinary process.

XXIII. Supervisors Responsibilities

A. Coordinate and consult with the Administrator on all aspects of any form of employee disciplinary action.

B. Initially investigating a problem.

C. Determining if disciplinary action or further investigation is required.

D. Carrying out appropriate disciplinary action.

E. Providing a signed copy of formal disciplinary documents to Personnel Support Staff for insertion in the employee's personnel file.

F. Complying with an employee's request for representation during a disciplinary meeting, however, are not required to notify an employee of this right.

G. Notify Human Resources in Helena of potential disciplinary problems that may result in

grievances or arbitrations.

H. Notify Human Resources in Helena before initiating any suspension without pay or termination.

XXIV. Human Resources Responsibilities

- A. Providing necessary support to employees, such as:
- B. explain disciplinary policies;
- C. advise employees on grievance procedures and other dispute resolution options;
- D. provide mediation services as needed.
- E. Defending disciplinary actions taken by supervisors including:
- F. providing assistance in writing and reviewing disciplinary letters and grievance responses;
- G. provide advice on appropriate, defensible disciplinary actions or measures;
- H. appoint, train and monitor neutral investigators;
- I. consult with legal staff, as needed, on disciplinary matters;
- J. respond to grievances and represent the Department in arbitrations or other hearings;
- K. work with union representatives to settle grievances or other issues;
- L. provide any other services needed by management or supervisors on disciplinary actions.

Revisions:

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Title	Date

Approved By: _____	<u>01/01/02</u>
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